

RESOURCE FAMILY APPROVAL (RFA) BACKGROUND CHECK

FREQUENTLY ASKED QUESTIONS (FAQs)

1. **Exempt Individuals:** Who is exempt from RFA background check requirements?

An applicant and any adult, other than a nonminor dependent, who resides or is regularly present in a resource family's home must be printed, unless exempted pursuant to WDs section 6-03A(f). However, 6-03A(g) permits a county to print an individual who is otherwise exempt from printing pursuant to 6-03A(e), provided that there is contact that may pose a risk to the health and safety of a child or nonminor dependent.

2. **Required to Print:** Can we have the applicant's best friend fingerprint, since we may use her for childcare in the future?

Not necessarily. The County cannot require the best friend to fingerprint unless she resides or is regularly present in the applicant's home. (Please refer to Written Directives 6-03A.) Written Directives contain standards for how a child shall be cared for outside of the home. (See Article 11 of the Written Directives.) These standards are separate from the criminal record background check process for RFA approval. A consideration of an applicant's ability to meet these standards is relevant to the county's Permanency Assessment.

3. **Transfers:** Our County accepted a transfer case from another county. This was a home approved through the Relative Approval process, and the family is the permanent plan for the child. We are planning on doing a RFA conversion with the family. Can the other county share their exemptions with our county?

The county may not share criminal history documents received from the Department of Justice (i.e., RAP sheets). However, a county may share their exemption analysis and decision, as well as court documents and arrest reports that were ordered as part of the exemption decision process. Rap-back service (i.e., subsequent arrest notification) needs to be transferred from the old county via a request to DOJ (see BAG section 122). Please refer to [ACL 17-16](#) for RFA conversion procedures.

4. **Exemption Denials:** If an individual submits fingerprints and it is likely the individual will not be granted an exemption, can the county tell that individual to withdraw from the RFA process rather than proceed with the exemption process and deny?

The individual may voluntarily withdraw from the process. However, a county may not encourage individuals to withdraw or halt the application process based solely on live scan results. Doing so deprives the applicant of due process by circumventing his or her right to request an exemption and his or her right to appeal and a hearing with Office of Administrative Hearings (OAH) or State Hearings, as applicable.

5. **Previous Exemptions:** If a current RFA applicant was previously granted an exemption through the Relative Approval or Licensing program, can we use their old exemption?

Only if the exemption is current, meaning there is a child placed and the family is converting an existing Relative/NREFM approval or FFH license (please refer to [ACL 17-16](#) for RFA conversion procedures). If the applicant is not currently licensed or approved, the applicant needs to go through the background check process just like all initial applicants. The subsequent arrest notification for the prior approval/licensure should have been canceled by sending the No Longer Interested (NLI) to DOJ. The individual needs to submit new live scan fingerprints, and the county needs to send out the Exemption Needed notice if any convictions appear on the current CORI or RFA 01B. (The old CORI cannot be considered.) The county can, however, rely on previously obtained court documents or arrest reports if the same arrests/convictions appear again on the current CORI. Statements, references, and all other exemption request documents need to be current.

6. **Adam Walsh Crimes:** An applicant was convicted of a crime against a child. Why is this Penal Code section not in the BAG's Adam Walsh Non-Exemptible list? This was a felony conviction.

The Adam Walsh list is not exhaustive and only includes a list of crimes that CDSS has deemed *likely* to meet the descriptive criteria laid out in Health and Safety Code section 1522(g)(2)(A)(iii). The California Penal Code is constantly being amended, thus a crime may be considered non-exemptible under the Adam Walsh Act's broad descriptive criteria but not listed in the most recent version of the BAG. Consult with your county liaison if you are unsure if a crime is exemptible. As always, a legal consult is required before any Notice of Action is served, including an exemption denial for a non-exemptible crime.

7. **"Dismissed" or "Expunged" Convictions:** In regard to Dismissals per Penal Code section 1203.4, etc., oftentimes when doing record checks we come across court cases where an individual pled and entered a conditional settlement (i.e. remain free from further arrests and convictions for 6 months and the charges are then dismissed) but there is no indication it was dismissed per Penal Code section 1203.4. Would such an offense be considered a conviction for exemption purposes?

If there is a plea of guilty followed by the imposition of sentence (i.e. incarceration or probation), then the entry may generally be considered a conviction for RFA background check purposes. (Health and Safety Code section 1522(f).) A charge alone, without a plea and sentence, does not constitute a conviction for RFA purposes. Entering a conditional settlement also does not mean that the individual petitioned the court to have the conviction set aside and dismissed per Penal Code section 1203.4. It could mean that the individual was granted a deferred entry of judgment or a diversion program. It is always best practice to obtain certified court records to determine what the actual disposition was.

8. If an individual was convicted of a non-exemptible crime which was set aside and dismissed per Penal Code section 1203.4, is the individual entitled to a clearance or supposed to go through the exemption process?

The individual is not eligible to request an exemption for the non-exemptible conviction. The County would need to schedule a legal consult prior to sending the Notice of Action. Remember that any individual who has fulfilled the conditions of his or her probation is able to petition the court to have the conviction set aside and dismissed pursuant to Penal Code section 1203.4 or 1203.4a. However, this does not mean that the crime did not occur. The County should process the entry as it normally would for any conviction, and ignore the 1203.4 or 12.03.4a “dismissal” for purposes of the RFA background check.

9. **Pardons and Certificates of Rehabilitation:** Under 6-03B(h), governor’s full and unconditional pardon and Certificate of Rehabilitation from the superior court may support a determination that an individual has been rehabilitated and is presently of good character, so even if the individual has either, the County must still look further?

If an individual has been granted a governor’s pardon for a conviction, the denial of an exemption cannot be based on the record of this criminal conviction and the conviction may not serve as the basis of further investigation. If the County has questions or doubts about the status of a conviction, consult with your county liaison.

An individual who has obtained a Certificate of Rehabilitation was able to show the court that he or she has met specific criteria which may be relevant to whether a county grants an exemption *for an exemptible crime*; however, this Certificate does not make the individual eligible to request an exemption if the conviction was for a non-exemptible crime (H&SC 1522(g)(2)(A). Refer to BAG section 112. As always, utilize a legal consult prior to issuing any Notice of Action.

10. **Immigration Information:** If a CORI shows a crime related to unlawful entry into U.S., but there is no clear indication of conviction, arrest, etc., does this situation require an exemption? How do you handle immigration type CORI results?

Look to the disposition entry on the rap sheet, to determine whether a penalty, jail time, or probation was imposed. Generally, these are good indicators that there was a conviction. The individual must request an exemption for any conviction(s) other than a minor traffic violation, and must be evaluated for present good character and rehabilitation, regardless of immigration status. If the rap sheet indicates a “deportation” or “deported to country of origin,” the individual was most likely returned to his or her country of origin. (See Question #11.)

11. If an individual was deported, is an exemption required?

If an individual’s rap sheet shows a deportation, this does not constitute a conviction. He or she would not need an exemption and is entitled to a clearance regardless of his or her immigration status, provided there is no additional arrest

or conviction indicated in the individual's criminal history information. A county may choose to investigate a deportation arrest and assess for conduct. However, approval of a resource family should not be delayed by the investigation, unless the arrest was for a crime specified at Health and Safety Code section 1522(e).

- 12. Evidence and Certified Documents:** Who is responsible for obtaining the arrest records and court records?

The individual is responsible for obtaining all documents listed in the exemption needed notice, including certified records of conviction from the superior court in which the individual was convicted (refer to BAG section 119). Note that law enforcement agencies will often refuse to release arrest reports to private individuals. Pursuant to Written Directives, the county is responsible for requesting a law enforcement record if the individual is unable to obtain it or the county determines that it is too burdensome for the individual to obtain the record. Ultimately, the county must obtain any documentation, including certified arrest and court records, that will be used as evidence to support a denial if the respondent appeals. RFA due process trainings address evidence issues in greater detail.

- 13. Arrest-Only Crimes:** Are all arrest-only crimes required to be investigated even if the incident did not result in a conviction?

No. Statute mandates that all serious arrests specified in Health and Safety Code (H&SC) 1522(e) be investigated prior to a clearance being granted. However, the county has the discretion to investigate any other arrests shown on the CORI and evaluate the underlying conduct provided that the resource family approval is not delayed due to a discretionary arrest investigation (refer to BAG section 113).

- 14. No Fishing:** Does a County have discretion to use additional databases/tools for RFA background checks?

No. The county does not have discretion to supplement the background check process with information from additional databases, such as each county's superior court website. Such tools should not be used to deny or delay a criminal record clearance when the rap sheet, RFA 01B, and other components of the background check specified in Written Directives indicate that the individual has no criminal history. Conversely, if the rap sheet or RFA 01B indicates a conviction or serious arrest, information may be obtained from other sources as part of a county's investigation or to confirm the final disposition. Also, keep in mind that additional information may be appropriate to consider in other components of the comprehensive assessment, including the Family Evaluation.

- 15. Placement v. Approval:** Courts are imposing placement orders and releasing minors to potential applicants BEFORE we even speak to them and/or begin the RFA process. Is this considered an "emergency placement?" Should we treat it as such? Should we immediately remove placements if CLETS hits occur?

The courts have always exercised their right to order placement of a child regardless of the approval status of a family or home. A County may evaluate the home for an emergency placement pursuant to Welfare and Institutions Code sections 309 and 361.4; however, a court-ordered placement is not considered an “emergency placement” as the requirements were not met prior to the emergency placement occurring (i.e., CLETS/child abuse checks, Home & Grounds Inspection – please refer to WDS section 4-08). The family is unable to receive IV-E foster care funding prior to resource family approval. The family, if a relative of the child, would need to apply for CalWORKs Non-Needy Caretaker funding, and best practice would be for the county to assist the family in completing the simplified CalWORKs application (please see [ACL 16-45](#)). NOTE: Assembly Bill (AB) 110 provides short-term interim funding through June 30th, 2018 for families receiving placements prior to approval. Families qualify for this funding if they have received placement after issuance of [ACL 18-33](#), which outlines the provisions of AB 110.

Remember that placement is separate from approval, and whether to place prior to the RFA approval process is within a county’s discretion. If a CLETS check indicates a non-exemptible crime, the child may not be placed in the home on an emergency basis. A full live scan fingerprint check is required within five business days of any emergency placement or within 10 calendar days from the CLETS check, whichever is sooner. The exemption process, including written notifications, must be initiated as soon as possible. This process is necessary to provide adequate due process for denied exemptions and to meet the “substantial and convincing evidence” standard for approved exemptions.

16. The CLETS check was completed for a relative of a dependent child. He only had one conviction, so can we just grant an exemption through the simplified exemption process before we make an emergency placement?

No. The County cannot grant an exemption based on the CLETS check. If an emergency placement is made, a live scan fingerprint check must be initiated within 5 business days of the emergency placement or within 10 calendar days following the CLETS check, whichever is sooner (refer to Welfare and Institutions Code 361.4). Proceed with the appropriate exemption process *based on the live scan results*.

17. Do we use the procedures outlined in the BAG whenever there are hits on the CLETS?

No. The Background Assessment Guide (BAG) does not apply to emergency placements or affect a county’s ability to make a placement. The BAG is only to be used for the background check process for RFA approval. (See BAG section 100(b) and Welfare and Institutions Code 361.4.)